Filed 1/12/09 In re A.S. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A.S., a Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.S., Defendant and Appellant.	B208237 (Los Angeles County Super. Ct. No. CK49801)

APPEAL from an order of the Superior Court of Los Angeles County, Sherri Sobel, Referee. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Denise M. Hippach, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

A mother appeals from an order terminating her parental rights to her two-year-old daughter, claiming that substantial evidence does not support the juvenile court's finding that her daughter, A.S., a dependent child of the juvenile court, was likely to be adopted. A maternal great-aunt had cared for A.S. for nearly two years and repeatedly stated her interest in and desire to adopt A.S. A prospective adoptive parent's expression of interest in adopting a child generally indicates the minor is likely to be adopted by that prospective adoptive parent or by some other family. It also constitutes substantial evidence supporting the juvenile court's finding that A.S. is likely to be adopted. We find no error and affirm the order terminating parental rights.

FACTUAL AND PROCEDURAL HISTORY

Detention: Shortly after A.S. was born, a toxicology screening showed that she had been exposed to PCP. C.S. (Mother) tested positive for PCP and cocaine. Mother admitted using PCP since age 17 and during her pregnancy, but denied using cocaine. Mother admitted smoking "sticks" of PCP in her third or fourth month of pregnancy with A.S. Mother was arrested for narcotics sales in 1998 and in 2005 or 2006, with the second arrest resulting in an order to complete a drug treatment program. Mother said she stopped attending after her second month of pregnancy.

By another father, Mother had an older daughter, M.S., also born with a positive toxicology screen for PCP and suffering from withdrawal symptoms at birth. M.S. was referred to the DCFS and declared a dependent child of the juvenile court. Mother resumed drug use after the juvenile court ordered her to participate in a substance abuse rehabilitation program and failed to comply with reunification services. Mother's parental rights to M.S. were terminated on February 11, 2004.

D.M. (Father) denied knowledge of Mother's drug use, said he never saw her under the influence of drugs, and said Mother had no drug problem. Father said he was arrested on September 3, 2006, charged with assault with a deadly weapon, and sentenced to five years parole. Father had a record of other violent crimes. He said he could not meet A.S.'s needs and preferred to have A.S. placed with Mother's cousin.

Petition: The DCFS filed a Welfare and Institutions Code section 300[1] petition alleging that A.S. was a child described by section 300, subdivision (b), in that Mother had a history of substance abuse, abused PCP and marijuana while pregnant with A.S., who was born with a positive toxicology screen for PCP, and Father failed to take appropriate action to protect A.S. The petition alleged that A.S.'s sibling, M.S., was born with a positive toxicology screen for PCP on August 2, 2002, which led to juvenile court intervention and termination of Mother's parental rights to M.S. on February 22, 2004. The petition alleged that A.S. suffered serious physical harm or illness as a result of the parents' failure to supervise or protect A.S. adequately, and because of the parents' inability to provide regular care due to their substance abuse.

Detention Hearing: On November 17, 2006, the juvenile court found that a prima facie case for detaining A.S. as a person described by section 300, subdivision (b) was established, ordered A.S. detained, ordered the DCFS to provide A.S. and the parents with family reunification services, ordered Mother to participate in a drug treatment program with random testing, and ordered monitored visits twice a week.

Jurisdiction and Disposition: On December 6, 2004, the DCFS reported that three-week-old A.S. was in a foster home, had gained two pounds since release from the hospital, was feeding well, had no medical concerns, and developed age appropriately. Mother stated that while she did not use PCP regularly, she admitted smoking marijuana when depressed and said she felt depressed while pregnant because she was put out of her grandmother's house. Mother blamed her positive test for cocaine on "second hand smoke" due to being in a car with the windows up in which a friend smoked cocaine. Mother admitted the truth of the allegations of the prior dependency case involving her first daughter, M.S. Mother admitted using drugs while pregnant with M.S., but stated she had not used drugs since A.S. was born. Mother denied having a drug problem and was reluctant to enter a drug treatment program.

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[1] Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

Father said he was in a program for his possession charge but he had no drug problem, had never used drugs, and had reported a drug problem to avoid going to jail. Father said he was scheduled to complete his program in January 2007. Father admitted to possessing drugs and to drug-related charges. Father said he knew Mother for five to six years and never knew her to use any drugs. Father also stated, however, that Mother told him she used PCP at her sister's baby shower when some old friends persuaded her to "hit sherm." Father said he did not feel stable enough to care for A.S. and wanted A.S. placed with a relative until he became more stable.

The foster parent reported that Mother and Father had visited A.S. and were appropriate on their visits.

At the January 18, 2007, hearing, the juvenile court found that A.S. was a child described by section 300, subdivision (b), declared A.S. a dependent child of the court, and ordered custody removed from the parents and placed with the DCFS. Pursuant to section 361.5, subdivision (b)(10), (11), and (13), the juvenile court ordered no family reunification services for Mother. The juvenile court ordered Father to participate in a drug-treatment program with random testing, a parenting class, and ordered the DCFS to provide housing information. The juvenile court ordered monitored visits for Mother and Father twice a week, and set the matter for a 90-day nonappearance progress report hearing for Father on April 19, 2007.

Progress Report Hearing: As of April 19, 2007, A.S. was placed in the home of maternal great-aunt Y.O. (MGA).

Since the January 18, 2007, hearing, Father had not contacted the DCFS, and despite several attempts by telephone, letter, and leaving a message with Mother to ask Father to call, the CSW was unsuccessful in contacting Father. Father provided no proof of his compliance with court-ordered activities and programs. Father visited A.S. only twice. A six-month review hearing was set for July 19, 2007.

Six-Month Review Hearing: As of July 19, 2007, A.S. continued to live with MGA, who reported that A.S. ate and slept well, had no medical or developmental concerns, and to be on target developmentally. At eight months of age, A.S. could sit

still without support and could stand with support, but had not yet started to crawl. MGA had stated she was interested in adoption. MGA had finalized adoption for A.S.'s sibling, M.S. Mother had provided no proof of her participation in any activity, but did visit A.S. an average of once every two weeks. Father had not contacted the CSW since the last hearing, provided no proof of participation in any court-ordered activities, and had no reported contact with A.S.

In an adoptability assessment, the DCFS stated that one interview with MGA was completed on June 27, 2007, and MGA had submitted an application for adoption and release of information. Numerous other adoptability items and documents remained outstanding. MGA stated that she adopted M.S. four years earlier and was very interested in adopting A.S., but had some hesitation about adopting A.S. because she had difficulty obtaining services for M.S. after that adoption finalized. M.S. had speech delays and motor skills which MGA believed were caused by M.S.'s exposure to PCP at birth. Noting that A.S. was also exposed to PCP at birth, MGA was concerned that the adoption of A.S. would finalize before developmental delays were assessed and documented. MGA reiterated that she wanted to adopt A.S., but wanted to wait 12 to 18 months to allow time to properly assess A.S. for developmental (motor/verbal) delays. A home study was in progress.

On July 19, 2007, the juvenile court found Father had not complied with his case plan, had not regularly visited with A.S., had not made significant progress in resolving the problems that led to A.S.'s removal from the home, and had not demonstrated the capacity and ability to complete his treatment plan and provide for A.S.'s safety. The juvenile court ordered family reunification services terminated for Father, and set the matter for a section 366.26 hearing on November 15, 2007.

The Section 366.26 Hearing: For the November 15, 2007, hearing, the DCFS reported that A.S. remained in MGA's home. Mother visited until she was incarcerated. Father's sporadic visits were not of good quality. The DCFS considered A.S. adoptable and recommended adoption as the permanent plan. The DCFS reported that further interviews were needed with MGA, and MGA's criminal clearances were needed. MGA

stated that she loved A.S., had adopted A.S.'s sister four years ago, and would like A.S. to be raised with family. The DCFS reported that MGA provided consistent care for A.S. since shortly after birth, and MGA had a strong relationship with A.S. and was very committed to providing a stable environment for her.

The DCFS reported that MGA was committed to adopting A.S., but because of difficulty in obtaining and receiving services for M. S. after she adopted her, MGA disclosed some hesitation about adoption. The CSW submitted a referral for Adoption Promotion Support Services to help MGA with her hesitation about pursing adoption, to obtain medical and mental health services for the children, and offer support in addressing their medical and mental health needs.

The home study was not complete as of November 15, 2007. The juvenile court continued the matter to December 19, 2007, for completion of the home study.

By December 19, 2007, the home study was not yet completed because MGA's personal problems, since resolved, had delayed interviews. The juvenile court continued the matter to January 23, 2008.

For the January 23, 2008, hearing, the DCFS reported more details about MGA's personal problems, which included a custody dispute with the father of her two teenage sons who lived with her. MGA, however, reiterated her interest in pursing adoptive planning. On January 23, 2008, A.S.'s attorney reported that only three items remained to complete the home study, and the delay was largely attributed to scheduling difficulties. A.S.'s attorney said she had been in contact with MGA since A.S. was placed in her home, and her social workers had visited A.S. many times. After talking to MGA, A.S.'s attorney was convinced MGA was committed to adopting A.S. The juvenile court ordered the home study completed by the next hearing date and set the matter for February 25, 2008.

A February 20, 2008 report informed the juvenile court that on January 24, 2008, a CSW visited MGA and her children. MGA told the CSW that she remained interested in adopting and was willing to proceed with the home study. The CSW assisted MGA with referrals to obtain required medical reports and TB tests and faxed a request for the

children's report cards to their school on January 25, 2008, but had received no response. On February 25, 2008, the juvenile court gave the adoptions worker 60 days to complete the home study and set the matter for a contested section 366.26 hearing on April 25, 2008.

On April 25, 2008, Mother filed a section 388 petition, asserting that she participated in a live-in substance abuse program, tested clean through probation, had attended parenting education, actively participated in services offered to her through the regional center, and had regular and consistent contact with A.S. The petition sought modification of the order denying family reunification services and setting the permanent plan hearing, and requested an order requiring the DCFS to provide family reunification services or alternatively order A.S. returned once Mother was in a facility that accepted children.

On April 25, 2008, the juvenile court granted a hearing on Mother's section 388 petition for May 19, 2008, ordered the DCFS to prepare a report addressing that petition, and continued the section 366.26 hearing to May 19, 2008.

In its May 19, 2008, report, the DCFS stated that the FBI criminal clearances on MGA's significant other were still pending. It was unknown if additional interviews would be needed to address that person's criminal clearances.

Regarding Mother's section 388 petition, the DCFS confirmed that since her release from incarceration on October 1, 2007, Mother enrolled and participated in the Hillsman live-in drug and alcohol center. Mother drug tested negative on January 7, February 5, and April 14, 2008; there was a pending result on May 12, 2008. Mother also received parenting education at the Hillsman center, and actively participated in a perinatal substance abuse program through a regional center. Mother, however, had not had regular contact with A.S., and before Mother's incarceration on July 9, 2007, her visits with A.S. were not consistent. After 90 days in the Hillsman program, Mother was eligible for passes beginning on the first weekend in January 2008. Since that date, Mother received 19 passes, but had visited A. S. only six times. A CSW observed part of Mother's May 13, 2008, visit with A.S. Mother did not play with A.S., but sat watching

A.S. move around the living room. Twice Mother picked up A.S. and put her down. There did not appear to be a bond between Mother and A.S. Mother brought no toy, food, or snack to the visit, and told the CSW she did not know what to bring. Mother stated that A.S. did not recognize her, but recognized MGA.

In the May 19, 2008, hearing, the juvenile court found that the proposed change of order would not promote A.S.'s best interest and denied Mother's section 388 petition. Counsel for the DCFS informed the court that it expected the home study to be approved and a social worker in attendance also stated that it would be approved. The juvenile court found that it was likely that A.S. would be adopted, found no exceptions, ordered the parental rights of Mother and of Father to A.S. terminated, and ordered the care, custody, and control of A.S. transferred to the DCFS for adoption planning and placement.

Mother filed a timely notice of appeal.

ISSUE

Mother claims that substantial evidence did not support the juvenile court's finding that A.S. was adoptable.

DISCUSSION

Mother claims on appeal that substantial evidence did not support the juvenile court's finding that A.S. was adoptable. Mother argues that despite an order referring A.S. for a developmental assessment, that development assessment was never conducted, and the home study of MGA was not completed at the time of the order finding A.S. adoptable and terminating parental rights.

1. *Standard of Review of Adoptability Findings*

Section 366.26, subdivision (c)(1) states, in relevant part: "If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption."

"The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.] In making this determination, the juvenile court must focus on the child, and whether the child's age, physical condition, and emotional state may make it difficult to find an adoptive family. [Citations.] In reviewing the juvenile court's order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the dependent child of the juvenile court] was likely to be adopted within a reasonable time." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400.)

2. *Substantial Evidence Supports the Finding that A.S. Was Likely to be Adopted*

Mother argues that neither the existence of a prospective adoptive family nor a social worker's opinion that a child is adoptable, by itself, is dispositive.

As to the first point, MGA consistently expressed interest in adopting A.S. " '[T]he fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*.' " (*In re Y.R.* (2007) 152 Cal.App.4th 99, 112.)

As to the second point, it is true that "[a] social worker's opinion, by itself, is not sufficient to support a finding of adoptability. [Citation.]" (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) The social worker's opinion, however, is some evidence supporting a finding of the likelihood of adoption.

Mother claims that the DCFS reports contained no discussion of A.S.'s age, characteristics, physical or developmental state. A.S. was nearly two years old at the section 366.26 hearing, a young age that made adoption more likely (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79-80; see also section 366.26, subd. (c)(3).) No developmental concerns were noted when A.S. was three weeks old; there were no medical or developmental concerns when A.S. was eight months old, and A.S. appeared

neatly and appropriately clothed, physically healthy and well fed; at 11 months of age A.S. was reported to be "on target developmentally." Although Mother cites concerns that the exposure of A.S. to PCP at birth may have created development problems resembling those of her older sister, who was also born exposed to PCP, Mother cites and the record contains no evidence of such problems.

Mother claims there was no indication that there were any approved families looking to adopt a child like A.S. There did not need to be: a prospective adoptive parent serves as evidence a child is likely to be adopted within a reasonable time either by the prospective adoptive parent or some other home. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

Mother cites evidence that MGA was hesitant about pursuing adoption and the home study was not complete as of the section 366.26 hearing. MGA stated she desired to proceed slowly because of difficulty she experienced with obtaining services for M.S., who had developmental problems, after the adoption finalized. The record contains no indication, however, that A.S. had developmental problems. Moreover, the DCFS submitted a referral for Adoption Promotion Support Services to help MGA with her hesitation about adoption, to obtain medical and mental health services for the children, and offer support in addressing their medical and mental health needs.

With regard to the home study not being complete, there is no requirement that it had to be. "[T]here is no requirement that an adoptive home study be completed before a court can terminate parental rights. The question before the juvenile court was whether the child was likely to be adopted within a reasonable time, not whether any particular adoptive parents were suitable. [Citation.] '[T]he question of a family's suitability to adopt is an issue which is reserved for the subsequent adoption proceeding.' " (*In re Marina S.* (2005) 132 Cal.App.4th 158, 166.)

We find that there is substantial evidence to support a finding that A.S. was adoptable. The juvenile court can rely solely on the prospective adoptive parent's willingness to adopt. (*In re Helen W., supra*, 150 Cal.App.4th at p. 80.) "When a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent's adoption and whether he or she is able to meet the needs of the child." (*Ibid*.) Mother makes no claim, and the record contains no evidence, that MGA would face any legal impediment to adoption. The adoption assessment report included ample evidence that MGA would provide excellent care for A.S. as she had for nearly two years, that she parented A.S. and A.S.'s older sister appropriately and caringly, that MGA was financially secure and emotionally mature, and that she understood the responsibilities of adoption. (*Ibid*.) We affirm the juvenile court's order finding that A.S. was likely to be adopted.

DISPOSITION

The order is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.